

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|---|--|---------------------------|--|------------------------------------|--|
| Investigator: Greg Finch | Team: Squad #14 | CCRB Case #: 201607556 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Saturday, 08/27/2016 12:25 AM | Location of Incident: Front of 201 Pulaski Street | Precinct: 79 | 18 Mo. SOL 2/27/2018 | EO SOL 2/27/2018 | |
| Date/Time CV Reported Sat, 08/27/2016 12:31 AM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Thu, 09/01/2016 10:58 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
| | |
| | |
| | |
| | |
| | |

| Subject Officer(s) | Shield | TaxID | Command |
|-------------------------|--------|--------|---------|
| 1. POM Gerard Cash | 18279 | 951594 | PBBN SU |
| 2. POM David Mercado | 11610 | 952007 | PBBN SU |
| 3. POM Salvatore Melore | 02092 | 952004 | PBBN SU |

| Officer(s) | Allegation | Investigator Recommendation |
|------------------------|--|-----------------------------|
| A.POM David Mercado | Abuse: Police Officer David Mercado stopped § 87(2)(b) | |
| B.POM Gerard Cash | Abuse: Police Officer Gerard Cash stopped § 87(2)(b) | |
| C.POM Salvatore Melore | Abuse: Police Officer Salvatore Melore stopped § 87(2)(b) | |
| D.POM David Mercado | Force: Police Officer David Mercado used physical force against § 87(2)(b) | |
| E.POM David Mercado | Force: Police Officer David Mercado used a chokehold against § 87(2)(b) | |
| F.POM David Mercado | Force: Police Officer David Mercado restricted § 87(2)(b)'s breathing. | |
| G.POM David Mercado | Abuse: Police Officer David Mercado frisked § 87(2)(b) | |
| H.POM Gerard Cash | Abuse: Police Officer Gerard Cash frisked § 87(2)(b) | |
| I.POM Gerard Cash | Abuse: Police Officer Gerard Cash searched § 87(2)(b) | |
| J.POM David Mercado | Abuse: Police Officer David Mercado refused to provide his name and shield number to § 87(2)(b) | |
| K.POM Gerard Cash | Abuse: Police Officer Gerard Cash refused to provide his name and shield number to § 87(2)(b) | |
| L.POM Salvatore Melore | Abuse: Police Officer Salvatore Melore refused to provide his name and shield number to § 87(2)(b) | |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|--|-----------------------------|
| M.POM David Mercado | Force: Police Officer David Mercado used physical force against § 87(2)(b) | |
| N.POM Gerard Cash | Force: Police Officer Gerard Cash used physical force against § 87(2)(b) | |
| O.POM David Mercado | Force: Police Officer David Mercado used a chokehold against § 87(2)(b) | |
| P.POM David Mercado | Force: Police Officer David Mercado restricted § 87(2)(b)'s breathing. | |
| § 87(4-b), § 87(2)(g) | | |

Case Summary

On August 27, 2016, § 87(2)(b) filed a complaint via telephone with IAB generating log #16-30707. The CCRB received the case on September 1, 2016.

On August 27, 2016, at approximately 12:25 a.m. § 87(2)(b) was standing on the northwest corner of Throop Avenue and Pulaski Street in Brooklyn waiting for his girlfriend, § 87(2)(b). Police Officer David Mercado, Police Officer Gerard Cash and Police Officer Salvatore Melore of Patrol Borough Brooklyn North Specialized Unit approached the northwest corner of the intersection in an unmarked RMP. PO Cash parked the RMP and PO Mercado exited the RMP and stopped § 87(2)(b) (**Allegations A, B and C**). PO Mercado allegedly punched § 87(2)(b) (**Allegation D**). PO Mercado held § 87(2)(b) against a crosswalk pole, and allegedly held his forearm against § 87(2)(b)'s neck, causing his breathing to be restricted (**Allegations E and F**). PO Melore and PO Cash exited the RMP then approached. PO Mercado frisked § 87(2)(b) (**Allegation G**). PO Cash allegedly frisked and searched § 87(2)(b) (**Allegations H and I**). After PO Mercado released him, § 87(2)(b) asked all three officers for their name and shield numbers, and they allegedly did not respond (**Allegations J, K and L**). § 87(2)(b) held the door of the RMP, and in response PO Mercado and PO Cash pushed § 87(2)(b) back towards the sidewalk (**Allegations M and N**). § 87(2)(b) alleged that during this push, PO Mercado choked § 87(2)(b) and restricted his breathing (**Allegations O and P**). Officers reentered the RMP and drove away. Approximately five minutes later, officers returned to the intersection to speak with § 87(2)(b)'s mother, § 87(2)(b) and provided their names and shield numbers to her. PO Mercado did not prepare a stop and frisk report for the incident (**Allegation Q**) (BR 01).

No video footage was available for this incident.

APU Prosecutor Raasheja Page was consulted during the investigation of this case.

This case exceeded the 90-day benchmark by two weeks due to scheduling difficulties with the witnesses in this case.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined the option of mediation.
- As of November 23, 2016, there has been no Notice of Claim filed with the NYC Comptroller's office regarding this incident (BR 03).
- § 87(2)(b) has no prior arrests in BADS, and without a NYSID number the undersigned investigator could not perform searches for previous convictions in the Office of Court Administration database (BR 04).

Civilian and Officer CCRB Histories

- § 87(2)(b) does not have any prior CCRB complaints (BR 05).
- PO Mercado has been a member of the NYPD for four years and has four prior complaints with ten allegations (see officer history). He has two previous physical force allegations, with one closed as complainant uncooperative and one closed as complainant unavailable.
 - In case #201508826, the Board substantiated stop, frisk and search allegations, § 87(4-b), § 87(2)(g) and recommended Charges. The NYPD

disposition has not yet been determined.

- PO Cash has been a member of the NYPD for four years and has eight prior complaints with fourteen allegations. He has three previous physical force allegations, with two closed as complainant uncooperative and one closed as exonerated.
 - In case #201507073, the Board substantiated stop, retaliatory summons and premises entered and searched allegations, and recommended Command Discipline B and Formalized Training. CTS did not contain the NYPD disposition.
- PO Melore has been a member of the NYPD for four years and has four prior complaints with eight allegations. No allegations were substantiated § 87(2)(g) [REDACTED]

Potential Issues

- No video footage was available for this incident as the CCRB Field Team canvass determined that no exterior video cameras covered the incident location (BR 06).
- A sworn statement was not taken from § 87(2)(b) [REDACTED] (BR 07).

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) [REDACTED] initially attributed the search to PO Mercado; however, when questioned further he admitted that he had difficulty attributing the actions of the search to specific officers because he was physically interacting with multiple officers (BR 08). For example, § 87(2)(b) [REDACTED] was unsure which officer patted down his torso. The civilian with the best view of the search was § 87(2)(b) [REDACTED] who stood ten feet away from the stop on the same sidewalk with no visual obstruction (BR 09). § 87(2)(b) [REDACTED] alleged that as one officer used two arms against § 87(2)(b) [REDACTED]'s chest to hold him against the crosswalk pole, another officer inserted his hand into § 87(2)(b) [REDACTED]'s right pants pocket and removed an object. PO Mercado held § 87(2)(b) [REDACTED] during the stop. No officer or civilian alleged that PO Melore searched § 87(2)(b) [REDACTED] during this incident. By process of elimination, the investigation identified this second officer as PO Cash. Therefore the search allegation is pled against PO Cash.

Allegation A – Abuse of Authority: Police Officer David Mercado stopped § 87(2)(b) [REDACTED]

Allegation B – Abuse of Authority: Police Officer Gerard Cash stopped § 87(2)(b) [REDACTED]

Allegation C – Abuse of Authority: Police Officer Salvatore Melore stopped § 87(2)(b) [REDACTED]

Allegation G – Abuse of Authority: Police Officer David Mercado frisked § 87(2)(b) [REDACTED]

Allegation H – Abuse of Authority: Police Officer Gerard Cash frisked § 87(2)(b) [REDACTED]

Allegation I – Abuse of Authority: Police Officer Gerard Cash searched § 87(2)(b) [REDACTED]

It is undisputed that PO Mercado, PO Cash and PO Melore stopped § 87(2)(b) [REDACTED] and that PO Mercado frisked § 87(2)(b) [REDACTED]

According to § 87(2)(b) [REDACTED] he was standing on the northwest corner of Throop Avenue and Pulaski Street in Brooklyn on his cell phone texting his girlfriend, § 87(2)(b) [REDACTED] who he was waiting for to arrive in a cab (BR 08). § 87(2)(b) [REDACTED] was texting with his right hand with his left hand in his pocket, and was wearing a fitted green shirt and tight pants with no bulges. A black unmarked RMP pulled up to the northwest corner of the intersection and officers exited the vehicle. PO Mercado approached § 87(2)(b) [REDACTED] and said, “Oh hey.” § 87(2)(b) [REDACTED] said, “Who

are you?” § 87(2)(b) did not turn away from any officer, and no officer issued any commands or identified themselves to § 87(2)(b). Three seconds after exiting the RMP, PO Mercado punched § 87(2)(b) in the chest, grabbed his arm and pulled him. § 87(2)(b) shook loose to free himself from PO Mercado’s grasp. PO Mercado pinned § 87(2)(b) against a crosswalk pole with the assistance of PO Cash and PO Melore. § 87(2)(b) said, “Who are you, why are you doing this, why are you doing this to me?” At this point, § 87(2)(b) was able to see PO Mercado’s shield and realized these were police officers. PO Mercado patted § 87(2)(b)’s groin area, his legs and his ankles. § 87(2)(b) described that PO Mercado inserted his hand into § 87(2)(b)’s left pants pocket, and § 87(2)(b) was unsure if PO Mercado patted his right pants pocket or inserted his hand inside. However, as discussed in the Explanation of Officer Identification section, the investigation concluded that it was PO Cash who searched § 87(2)(b). § 87(2)(b) believed that either PO Cash or PO Mercado patted down his torso, but was unsure which officer it was. At no point did § 87(2)(b) strike or hit any officer, and PO Mercado’s pat down and search of § 87(2)(b) lasted thirty seconds. At no point did any officer ask § 87(2)(b) to remove his hand or hands from his pockets. After search ended, all three officers let go of § 87(2)(b) and walked towards the unmarked RMP. PO Mercado said to § 87(2)(b) “We’re looking for a person with a gun.”

According to § 87(2)(b) he passed § 87(2)(b) on the northwest corner of the intersection moments before the stop, and was ten feet away from the stop as it occurred (BR 09). § 87(2)(b) is § 87(2)(b)’s neighbor and had not met him before this incident. § 87(2)(b) said that § 87(2)(b) was not the only civilian on the four corners of Throop Avenue and Pulaski Street, and estimated that four or five civilians were in the immediate area at the time of the stop. § 87(2)(b) was holding a cell phone in his right hand, and § 87(2)(b) was unsure if § 87(2)(b)’s left hand was in his pocket. After walking north past § 87(2)(b) on the west side of Throop Avenue, § 87(2)(b) heard the RMP stop and voices behind him, and by the time he turned around PO Mercado and PO Cash had already pushed § 87(2)(b) up against the crosswalk pole on the corner. § 87(2)(b)’s arms were stretched up and away from his body as he was frisked and searched by PO Cash. PO Cash patted down § 87(2)(b)’s shirt and legs and inserted his hand into § 87(2)(b)’s right pants pocket to remove an object before placing it back inside the pocket. The stop lasted a few minutes before PO Mercado released § 87(2)(b). § 87(2)(b) did not attempt to place his hands in his pockets during the stop.

According to § 87(2)(b) in Brooklyn, he was walking south on the east side of Throop Avenue towards the bodega on Throop Avenue and Pulaski Street moments before the stop (BR 10). § 87(2)(b) is § 87(2)(b)’s neighbor and had not met him before this incident. § 87(2)(b) counted nine individuals other than § 87(2)(b) in the immediate area of the intersection of Throop Avenue and Pulaski Street. The RMP pulled up to the northwest corner of Throop Avenue and Pulaski Street and PO Mercado exited and approached § 87(2)(b). § 87(2)(b) asked, “What do you want, what’s the matter, what did I do?” No officer spoke to or issued any command to § 87(2)(b) before or during the stop beyond saying, “Shut up.” § 87(2)(b) did not have his hands in his pockets at any point and § 87(2)(b)’s viewing angle precluded him from seeing if § 87(2)(b) attempted to walk away from PO Mercado as he approached. PO Mercado grabbed § 87(2)(b) under his armpits, pushed him up against the RMP and frisked him. PO Cash and PO Melore exited the RMP and approached the stop. § 87(2)(b) repeatedly asked, “Who are you? What are you doing? Why are you doing this to me? Help – call the police.” § 87(2)(b) was unable to see the lower bodies of § 87(2)(b) and the officers due to his viewing angle being blocked by the RMP.

§ 87(2)(b) estimated that four civilians were on the four corners of the intersection. (BR 07). § 87(2)(b) was in a cab, only briefly viewed the stop, and did not see the details of any frisk or search.

According to § 87(2)(b) later that night when officers returned to apologize for the stop, PO Cash told § 87(2)(b) that the reason he stopped § 87(2)(b) was that he received a description of a black male standing on the corner of Dekalb Avenue with a gun (BR 11). PO Cash told § 87(2)(b) that he acknowledged that, "We were wrong in the way we apprehended your child, that's why we came back because we wanted to apologize." PO Cash did not articulate what specifically was wrong about the stop.

According to PO Mercado's account of the tip, as PO Cash drove through Hart Street and Throop Avenue, an older black male flagged down the unmarked RMP and told the officers, "There's a kid on the next corner with a gun on him" (BR 12). When asked what he took the word 'kid' to mean, PO Mercado said, "People use the word 'kid' for anything" and "I guess a teenager or somebody in their twenties, somebody young." PO Mercado did not know the tipster. PO Mercado indicated the corner the tipster referred to was at the intersection of Pulaski Street and Throop Avenue, which is one block down Throop Avenue. When asked if the tipster had come out of a building, PO Mercado said, "I don't know, I just saw him -- it was one of those, it happened quick." No officer further questioned the tipster regarding the information. PO Mercado estimated that ten to fifteen seconds passed between receiving the tip at Hart Street and Throop Avenue and travelling to the northwest corner of Pulaski Street and Throop Avenue.

According to PO Mercado's account of the stop, PO Mercado observed § 87(2)(b) as the only person standing on any of the four corners of Pulaski Street and Throop Avenue. PO Mercado observed § 87(2)(b) "maybe for a couple of seconds, just trying to see all four corners upon approaching the intersection, if this was credible or not." PO Mercado did not recall how § 87(2)(b) was dressed. PO Cash pulled the RMP up to the northwest corner, where § 87(2)(b) was standing. § 87(2)(b)'s hands were outside of his pockets upon initial observation, but as PO Mercado exited the RMP and approached § 87(2)(b) he put his right hand in his right pocket and turned his right side away from PO Mercado. Based on these actions, PO Mercado suspected § 87(2)(b) of having a gun. PO Mercado did not recall if § 87(2)(b) was holding a phone before or during his approach. While approaching him, PO Mercado told § 87(2)(b) multiple times to remove his hand from his pocket, saying, "Let me see your hands, police, let me see your hands."

According to PO Mercado's account of the frisk, § 87(2)(b) unintentionally walked backwards into the crosswalk pole on the northwest corner of Throop Avenue and Pulaski Street. PO Mercado grabbed § 87(2)(b)'s right wrist while it was still in his right pocket. Based on § 87(2)(b)'s body language, PO Mercado used his free hand to frisk § 87(2)(b)'s pants pockets, waistband and inner thighs because those are areas where a firearm would be kept. The frisk concluded with negative results. § 87(2)(b) physically resisted the frisk by flailing his arms, moving his body and being combative, but was unable to free himself from PO Mercado's grip. Beyond holding his right wrist, PO Mercado did not take any physical actions to control § 87(2)(b) and did not enter any of § 87(2)(b)'s pockets. PO Melore and PO Cash were nearby PO Mercado, but did not touch § 87(2)(b). After reentering the RMP after the frisk, officers canvassed in the surrounding area for a man with a gun based on the tip and the tipster, to negative results.

§ 87(2)(g)
According to PO Cash, he could see the

intersection of Throop Avenue and Pulaski Street but could not see § 87(2)(b) at the time he received the tip (BR 13). When asked if he believed the tipster's information was credible, PO Cash said, "I had no reason to believe it was not credible." Before stopping § 87(2)(b) officers observed him for ten to fifteen seconds. PO Cash pulled up to the curb next to § 87(2)(b) and said "Police, is everything alright?" § 87(2)(b) looked nervous, wouldn't make eye contact with officers and looked west down Pulaski Street, which gave PO Cash the impression that § 87(2)(b) would run away. PO Cash did not recall what § 87(2)(b) was wearing. § 87(2)(b) started screaming and physically resisted PO Mercado's frisk by repeatedly attempting to put his hands back into his pants pockets. § 87(2)(b) did not lean against nor was he placed against any object during the frisk. By the time PO Cash approached PO Mercado and § 87(2)(b) and stood less than five feet from them, the frisk had concluded. PO Cash and PO Melore neither frisked nor touched § 87(2)(b) during this first part of the incident. PO Cash stated that the tip and § 87(2)(b)'s behavior were the sole factors contributing to officers' suspicion that § 87(2)(b) had a weapon.

According to PO Melore, the tipster pointed at the intersection of Throop Avenue and Pulaski Street when he said, "There's a kid over there on the corner with a gun" (BR 14). No officer asked further questions of the tipster because of the time-sensitive nature of the information. PO Melore could see the intersection, but his view was obstructed by cars on the street. § 87(2)(b) wore a white shirt and green pants, and as the RMP pulled up, PO Cash and PO Mercado identified themselves as police officers to § 87(2)(b). Officers did not wait to observe § 87(2)(b) due to the time-sensitive nature of the tip. § 87(2)(b) looked around and further bladed his body clockwise with his right hand remaining in his right pants pocket. PO Melore did not recall if § 87(2)(b) took any steps, where § 87(2)(b)'s left hand was or if § 87(2)(b) held a cell phone. § 87(2)(b) cursed and refused to remove his hand from the pocket while continuing to blade his body clockwise. PO Melore and PO Cash exited the RMP and approached the stop. PO Melore stood a foot behind PO Mercado during the frisk, and PO Cash stood behind and to the right of PO Mercado. PO Melore was unable to see if PO Mercado held § 87(2)(b) by his wrist during the frisk. PO Melore did not recall if § 87(2)(b) attempted to put his hands in his pockets or use his hands to push PO Mercado's hands away. PO Melore recalled a crosswalk pole on the corner near the stop but did not recall if § 87(2)(b) made contact with the crosswalk pole during the stop. PO Melore did not recall if PO Cash touched § 87(2)(b). PO Melore stated that the intersection was located in a high-crime area.

§ 87(2)(g)

In order for a stop to be justified, an officer must have a reasonable suspicion that a person is committing, has committed or is about to commit a crime. A frisk requires reasonable suspicion that a person is armed. People v. Debour, 40 N.Y.2d 210 (1976) (BR 15). Anonymous

tips must be reliable in their assertions of illegality and in their tendency to identify a specific person. Florida v. J.L., 529 U.S. 266, (2000) (BR 16). A report of a crime and a description of a suspect provided to officers by an identifiable informant may provide reasonable suspicion to stop an individual fitting that description in the vicinity of the reported crime. People v. Heald, 2013 N.Y. Slip Op 52101 (Dist. C. Nassau Ct.-2013) (BR 17). In order to have reasonable suspicion to stop an individual based on a description, the individual must closely match the description and be in close temporal and spatial proximity to the crime. To have probable cause that would justify a search of an individual based on information obtained from an informant, the information must pass the *Aguilar-Spinelli* test requiring a showing of the reliability of the informant and the basis of the informant's knowledge. People v. Herold, 726 N.Y.S. 2d 65, 69 (2001 – 1st Dept.) (BR 18). Behavior that is susceptible to an innocuous interpretation, even in a high crime area, is not sufficient to establish reasonable suspicion. People v. Hampton, 200 A.D.2d 466 (1994) (BR 19).

APU Prosecutor Raasheja Page was consulted about the legal issues in these allegations.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D– Force: Police Officer David Mercado used physical force against § 87(2)(b)

According to § 87(2)(b) PO Mercado approached him and said, “Oh hey” (BR 08). § 87(2)(b) asked, “Who are you?” Three seconds after he exited the RMP, PO Mercado punched § 87(2)(b) in the chest and grabbed § 87(2)(b) by his arm and pulled him. § 87(2)(b) shook loose to free himself from PO Mercado’s grasp. PO Mercado pinned § 87(2)(b) against the crosswalk pole and punched § 87(2)(b) on the lower right side of his face with a closed fist. After the incident, § 87(2)(b) and § 87(2)(b) travelled to the 79th Precinct stationhouse, where the desk sergeant took photos of § 87(2)(b)’s injuries on his face, neck and back (BR 21; BR 22; BR 23).

According to § 87(2)(b) because of his viewing angle of PO Mercado’s approach, he was unable to see if force was used against § 87(2)(b) before the frisk (BR 10). After the frisk concluded and PO Mercado released § 87(2)(b) PO Mercado pushed § 87(2)(b) towards the sidewalk. § 87(2)(b) repeatedly asked for all three officers’ names and shield numbers. PO Mercado said, “Shut up,” and with his right hand punched § 87(2)(b) in his neck or jaw. § 87(2)(b) said, “You hit me,” and PO Mercado with his right hand punched § 87(2)(b) in the chest no more than five seconds after the first punch. § 87(2)(b) said to nearby witnesses, “Did y’all see that?” § 87(2)(b) did not grab or strike officers to attempt to do so during the incident.

According to § 87(2)(b) he didn’t see PO Mercado approach § 87(2)(b) (BR 09).

According to § 87(2)(b) after the stop § 87(2)(b) had red bruising on the side of his face and lip (BR 07).

According to § 87(2)(b) later that night when officers returned to apologize, § 87(2)(b) declined to speak to the officers, saying to them, “You didn’t talk to me when you approached me, you pinned me up and you punched me in my face” (BR 11). The officers did not respond to what § 87(2)(b) alleged, and told him to calm down.

According to PO Mercado, as he approached § 87(2)(b) he told him multiple times to remove his right hand from his right pants pocket, saying, “Let me see your hands, police, let me see your hands” (BR 12). § 87(2)(b) unintentionally walked backwards into the crosswalk pole on the northwest corner. PO Mercado grabbed § 87(2)(b)’s right wrist while it was still in his right pocket. § 87(2)(b) resisted the frisk by flailing his arms and moving his body, but was unable to free himself from PO Mercado’s grip. Beyond holding his right wrist, PO Mercado did not use force against § 87(2)(b). At no point did PO Mercado strike § 87(2)(b) in the jaw, face or neck. PO Mercado did not observe any visible injuries on § 87(2)(b). No officer struck § 87(2)(b) during the initial stop.

§ 87(2)(g)

According to PO Cash, there was nothing in § 87(2)(b)’s left hand, and § 87(2)(b) did not walk backwards as PO Mercado approached him (BR 13). PO Cash did not know what PO Mercado’s left hand was doing during

this time. PO Cash did not punch § 87(2)(b) during the stop nor see any other officer do so. § 87(2)(b) did not complain of any injuries and PO Cash did not observe any. According to PO Melore, PO Mercado did not use any physical force against § 87(2)(b) and did not punch § 87(2)(b) in the face or chest (BR 14). Officer accounts in the TRIs generated for this incident make no reference to this use of force (BR 30).

§ 87(2)(g)

Force may be used to take necessary action to protect life and personal safety of all persons present, and any application of force must be reasonable under the circumstances. Patrol Guide 221-01 (BR 20).

APU Prosecutor Raasheja Page was consulted about the legal issues in this allegation.

§ 87(2)(g)

§ 87(2)(g)

Allegation E – Force: Police Officer David Mercado used a chokehold against § 87(2)(b)

Allegation F – Force: Police Officer David Mercado restricted § 87(2)(b)'s breathing.

According to § 87(2)(b) PO Mercado pushed his right forearm bone against § 87(2)(b)'s throat to pin him against the crosswalk pole (BR 08). § 87(2)(b) said, “Who are you, why are you doing this, why are you doing this to me?” § 87(2)(b) struggled to speak as PO Mercado’s forearm restricted his breathing. After the incident, § 87(2)(b) and § 87(2)(b) travelled to the 79th Precinct stationhouse, where the desk sergeant took photos of § 87(2)(b)'s injuries on his face, neck and back (BR 21; BR 22; BR 23).

According to § 87(2)(b) during the stop PO Mercado held § 87(2)(b) against the crosswalk pole with his arms extended and palms flat against § 87(2)(b)'s chest (BR 09). As PO Cash frisked and searched § 87(2)(b) § 87(2)(b) repeatedly asked, “What did I do?” PO Mercado said, “Stop moving, stand still.” PO Mercado adjusted his hold and pressed his right forearm horizontally against § 87(2)(b)'s upper chest. During this motion, PO Mercado’s forearm slipped up and pressed against § 87(2)(b)'s throat for three to four seconds. PO Mercado appeared to have a very firm grasp of § 87(2)(b) against the crosswalk pole, and PO Mercado’s forearm adjustment was not in response to a change in behavior from § 87(2)(b)

§ 87(2)(b)'s stop lasted for a few minutes, and after the stop § 87(2)(b) said to § 87(2)(b) that officers had choked him.

According to § 87(2)(b) because his viewing angle was obstructed by the RMP, he could not see if additional force was used before the frisk or the details of the frisk (BR 10). Besides the punch to the jaw or neck, § 87(2)(b) did not see officers touch § 87(2)(b)'s neck or hear § 87(2)(b) say that he couldn't breathe during the incident.

According to § 87(2)(b) after the stop § 87(2)(b) had scratches and red bruising on his back (BR 07).

According to PO Mercado, § 87(2)(b) unintentionally walked backwards into the crosswalk pole, and PO Mercado grabbed § 87(2)(b)'s right wrist while it was still in his right pocket (BR 12). PO Mercado used his free hand to frisk § 87(2)(b). § 87(2)(b) physically resisted the frisk by flailing his arms, moving his body and being combative. Beyond holding his right wrist, PO Mercado did not take any physical actions to control § 87(2)(b) as he was "a lot bigger than he was, so I can frisk him without him moving around too much." § 87(2)(b) was unable to remove himself from PO Mercado's grip but attempted to do so. PO Melore and PO Cash were nearby PO Mercado, but PO Melore and PO Cash did not touch § 87(2)(b). When asked if he pinned § 87(2)(b) to the crosswalk pole, PO Mercado said, "The only person that would be based on the position would be me, I was the only one in front of him." PO Mercado did not pin § 87(2)(b) to the crosswalk pole, or touch his throat.

§ 87(2)(g)
According to PO Cash, he did not know what PO Mercado's left hand was doing during the frisk (BR 13). PO Cash could not see § 87(2)(b)'s right hand and was unsure how it exited his right pants pocket. § 87(2)(b) started screaming and physically resisted PO Mercado's frisk by repeatedly attempting to put his hands back into his pants pockets. § 87(2)(b) did not lean against and was not placed against the crosswalk pole during the frisk. According to PO Melore, he was unable to see if PO Mercado held § 87(2)(b) by his wrist during the frisk (BR 14). PO Melore did not recall if § 87(2)(b) attempted to put his hands in his pockets or push PO Mercado's hands away. PO Melore recalled a crosswalk pole on the corner but did not recall if § 87(2)(b) made contact with it. PO Mercado did not use any physical force against § 87(2)(b) and did not put his forearm up against his neck or chest.

§ 87(2)(g)
[REDACTED]

A chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air. Members of service shall not use a

chokehold. Patrol Guide 211-01 (BR 20).

APU Prosecutor Raasheja Page was consulted about the legal issues in these allegations.

§ 87(2)(g)

§ 87(2)(g)

Allegation J – Abuse of Authority: Police Officer David Mercado refused to provide his name and shield number to § 87(2)(b)

Allegation K – Abuse of Authority: Police Officer Gerard Cash refused to provide his name and shield number to § 87(2)(b)

Allegation L – Abuse of Authority: Police Officer Salvatore Melore refused to provide his name and shield number to § 87(2)(b)

According to § 87(2)(b)'s CCRB statement, after PO Mercado released him § 87(2)(b) asked all three officers for their names and shield numbers three to four times (BR 08). PO Mercado said, “Officer Williams.” PO Cash and PO Melore left without providing this information. § 87(2)(b) also alleged this in his written complaint submitted at the 79th Precinct stationhouse (BR 24).

§ 87(2)(b) and § 87(2)(b) both corroborated that § 87(2)(b) repeatedly requested the officers’ names and shield number, but was not provided the information. (BR 09, BR 10)

According to § 87(2)(b) when officers returned later that night to the incident location to apologize for the stop, § 87(2)(b) said that he wanted the officers’ shield numbers, and PO Cash wrote down all the officers’ names and shield numbers and gave the information to § 87(2)(b) (BR 11). PO Cash told § 87(2)(b) that the officers were from the 79th Precinct.

According to PO Mercado, § 87(2)(b) did not request any officer’s name or shield number (BR 12). At no point did PO Mercado, PO Cash or PO Melore identify themselves as “Officer Williams.” Later that night after returning to the scene of the stop, all three officers voluntarily provided their names, shield numbers and command to § 87(2)(b). No civilian requested their names or shield numbers. PO Cash and PO Melore’s statements corroborate PO Mercado’s with the following exception (BR 13). PO Melore was unsure if § 87(2)(b) requested the officers’ information after they returned to the intersection (BR 14).

§ 87(2)(g)

Patrol Guide Procedure 203-09 states that officers must “courteously provide [their] rank, name, shield number and command, or otherwise provide them, to anyone who requests [them] to do so and allow the person ample time to note this information” (BR 25).

APU Prosecutor Raasheja Page was consulted about the legal issues in these allegations.

§ 87(2)(g)

Allegation M – Force: Police Officer David Mercado used physical force against § 87(2)(b)

Allegation N – Force: Police Officer Gerard Cash used physical force against § 87(2)(b)

Allegation O – Force: Police Officer David Mercado used a chokehold against § 87(2)(b)

Allegation P – Force: Police Officer David Mercado restricted § 87(2)(b) s breathing.

According to § 87(2)(b) after he asked for the officers' names the second time, he held the RMP's open driver door by the base of the window (BR 08). PO Mercado approached § 87(2)(b) placed his opened hand on § 87(2)(b) s neck, pushed him backwards two to three steps and said, "Move away from the vehicle." PO Mercado squeezed § 87(2)(b) s neck and § 87(2)(b) tried again to ask for name and shield numbers again but was unable to speak due to PO Mercado restricting his breathing. All three officers reentered the car and drove away. At no point did § 87(2)(b) grab any officer's arm.

According to § 87(2)(b) as the officers approached the RMP to leave the scene, § 87(2)(b) repeatedly asked for their name and shield numbers (BR 09). § 87(2)(b) placed his body in between the open rear driver side door and the car in order to prevent the door from closing. PO Mercado pulled § 87(2)(b) away from the RMP and pushed § 87(2)(b) three or four feet towards the sidewalk by placing his left hand on § 87(2)(b) s shoulder. PO Mercado told § 87(2)(b) not to touch their vehicle. § 87(2)(b) was unsure if § 87(2)(b) touched any of the officers as they attempted to reenter the RMP.

According to § 87(2)(b) after the frisk concluded and PO Mercado released § 87(2)(b) PO Mercado pushed § 87(2)(b) towards the sidewalk (BR 10). § 87(2)(b) repeatedly asked for all three officers' names and shield numbers. § 87(2)(b) did not grab or strike officers or attempt to do so during the incident. Besides the punch to the jaw and chest, § 87(2)(b) did not see officers touch § 87(2)(b) s neck or hear § 87(2)(b) say that he couldn't breathe during the incident.

According to PO Mercado, after the frisk, § 87(2)(b) refused to produce his ID when it was requested and became "highly combative" (BR 12). § 87(2)(b) pulled and tugged on PO Mercado and PO Cash's left arm and shoulder and stood between PO Cash and the RMP to prevent him from reentering the RMP. Later in the interview, PO Mercado said that § 87(2)(b) only physically pulled on PO Cash's arm. § 87(2)(b) held the RMP driver side door to prevent PO Cash from entering the RMP. PO Mercado and PO Cash simultaneously shoved § 87(2)(b) on his shoulders so officers could reenter the RMP. PO Mercado instructed § 87(2)(b) to "Get back." PO Mercado said that § 87(2)(b) s actions constituted obstruction of governmental administration which is a crime. Beyond PO Mercado and PO Cash's shove, no officer used any additional force against § 87(2)(b) during this part of the incident. The statements of PO Cash and PO Melore largely corroborate that of PO Mercado's, with the following exceptions. According to PO Cash, he did not recall if § 87(2)(b) pulled on PO Mercado's arm or if PO Mercado pushed § 87(2)(b) as officers attempted to reenter the RMP (BR 13). According to PO Melore, PO Mercado pushed § 87(2)(b) off of PO Cash and

§ 87(2)(b) did not attempt to prevent PO Mercado from reentering the vehicle (BR 14).

Force may be used to take necessary action to protect life and personal safety of all persons present, and any application of force must be reasonable under the circumstances. Patrol Guide 221-01 (BR 20).

APU Prosecutor Raasheja Page was consulted about the legal issues in these allegations.

Although it is undisputed that § 87(2)(b) attempted to prevent officers' from reentering the RMP by holding the vehicle door, it is disputed what combination of PO Mercado and PO Cash pushed § 87(2)(b) in response. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Squad: 14

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date